

CHAPTER NINE

CONTRACTING WITH MINORS IN THE ENTERTAINMENT INDUSTRY

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[9.0] I. INTRODUCTION

This chapter deals exclusively with the employment of minors for *pay* in the entertainment industry and does not address issues of minors in the media where they are not paid—for example, in some reality shows or news stories. Further issues regarding pranks involving minors are covered in Chapter 11.

[9.1] II. COMMON LAW AND MINORS

At common law, a minor¹ (a child who has not attained the age of majority) does not have the sufficient capacity to understand and to bind himself or herself to a contract, other than for “necessaries.”² Therefore, a minor who signs a contract *could* void the contract at his or her election at any time. The ability of the child to void such a contract is referred to here as the “right to disaffirm.” The age of majority is governed by state law and differs from the age of license, which refers to the age at which an individual can exercise certain rights (e.g., to vote or buy alcohol). The age of majority refers to the point at which a person’s parents no longer have legal authority over the individual. Under New York statutory law, a minor *has* the right to disaffirm a contract even when the contract is signed by the minor’s parent or guardian.³

[9.2] III. MINORS AND ENTERTAINMENT CONTRACTS

Over the past few decades, employment of minors has been more commonplace in the entertainment industry, particularly with minors performing in music, film and television. As a result of this trend, legislative changes to the previous common law rules have been initiated for economic and business reasons. In addition, concern for the financial and general well-being of these children has caused the promulgation of other laws dealing with these issues.

1 Under some state statutes, a minor might also be referred to as an “infant.” *See, e.g.*, N.Y. Arts & Cultural Affairs Law § 35.03. For the purposes of this chapter, all references to a child under the age of 18 will be to a minor.

2 “Things that are indispensable to living [and] . . . usually considered reasonably essential to the preservation and enjoyment of life.” Black’s Law Dictionary 1058 (8th ed. 2004).

3 N.Y. General Obligations Law § 3-101 (GOL); *see, e.g.*, *Olshen v. Kaufman*, 385 P.2d 161, 235 Or. 423 (1963).

The right to disaffirm, despite the possible assessment of some sort of damages by the court,⁴ raises a legitimate concern by the employer of a minor, usually a studio or producer that has a significant economic investment at risk in the product (such as a recording, film or television show). In the case of a revocation of a management or agency agreement, a devoted representative of a minor may have concerns about the loss of substantial future commissions on earnings of an infant, when the services for such fees were previously provided.

There are frequently unfortunate, true stories about minors who have earned fortunes in their careers in the entertainment industry only to discover that upon reaching majority, their parents have squandered or otherwise lost these earnings.⁵ Historically, since most employers in the entertainment industry have been located in either New York City or Los Angeles, the vast majority of minors hired either came from or relocated to these two cities. It is for this reason that most of the case law involving minors in the entertainment industry can be found within the jurisdictions of California and New York. Both of these states, and California in particular, have developed a sophisticated system of laws and procedures under which contracts involving minors in the entertainment industry can be “affirmed” by a court, so that a minor cannot “disaffirm” his or her obligations. In addition, New York and California have also adopted rules regarding the strict safeguarding of a portion of a minor’s gross earnings until the minor reaches majority. The laws of these two states will be discussed separately below.

[9.3] IV. CALIFORNIA LAWS CONCERNING MINORS IN THE ENTERTAINMENT INDUSTRY

Attorneys, as a practical matter, will usually advise a client who is involved with a minor’s contract to look first at obtaining a court approval in California. This is simply because the procedure in California is streamlined due, in part, to many years of experience by the California courts in adjudicating a high volume of these petitions (in particular, the California Superior Court in Los Angeles County). The procedure for both the approval of the contract and the petition to safeguard the funds in

4 See *Scott Eden Mgmt. v. Kavovit*, 149 Misc. 2d 262, 563 N.Y.S. 2d 1001 (Sup. Ct., Westchester Co. 1990).

5 See Marc Jacobson, *Minors’ Contracts in the Entertainment Industry*, in *Entertainment Law*, Third Edition (Howard Siegel, Esq., ed., New York State Bar Ass’n 2004) (discussing Gary Coleman and the television show *Different Strokes*, and Lee Ann Rimes).

a so-called Coogan account is done with one petition.⁶ The procedure is available to any production company and/or minor that has a sufficient nexus with California.⁷ As discussed below in detail, it is only when there is a failure to have such a nexus that one should consider commencing an approval procedure in New York (or the even more daunting proposition of seeking approval in another state).

[9.4] A. California Law Fundamentals

In light of Hollywood's prominence in music, film and television, it is not surprising that California has a long history of statutes and case law concerning the employment of minors in the entertainment industry.

In California, the Coogan Act⁸ provides the specific statutory procedures for approving a minor's employment contract. In addition to the Coogan Act, the employment of minors in the entertainment industry is covered under California Family Code §§ 6500, 6750; California Labor Code §§ 2855, 1700; and the California Education Code §§ 49116, 48225.5.

Under California law, a minor has the right to disaffirm an employment contract. However, if a minor enters into a valid employment contract in California, he or she cannot disaffirm the contract based on the fact that it was entered into during the age of minority, or at anytime thereafter, provided that the contract has been approved by the California Superior Court in the county where the minor resides or is employed, or in which any party to the contract has its principal place of business.⁹

[9.5] B. Capacity of a Minor to Contract in California

In California, "[a] minor is defined as an individual who is under 18 years of age."¹⁰ A minor may enter into a contract under most circumstances in the same manner as an adult, subject to the power of disaffirmance.¹¹ However, a minor cannot (1) give a delegation of power, (2) make

6 Forms for this and a number of other petitions are appended at the end of this chapter.

7 For example, if the company does business in California and has an office there, or if the child is a resident or is working there as part of the employment.

8 California Family Code §§ 6750–6753 (Cal. Fam. Code).

9 Cal. Fam. Code § 6751(a).

10 Cal. Fam. Code § 6500.

11 Cal. Fam. Code § 6700.

a contract that relates to real property or an interest therein, or (3) enter into a contract relating to any personal property not in the immediate possession or control of the minor.¹²

[9.6] C. Disaffirmation of Contract by a Minor

A minor may disaffirm a contract (except as otherwise provided by statute) before the age of majority or within a reasonable time thereafter.¹³ In the event of the minor's death within a reasonable time after reaching the age of majority, the minor's heirs or personal representative may also disaffirm a contract.¹⁴

In practice, many entertainment companies require the precautionary step that the parent or guardian of the minor sign a separate parental guarantee of the minor's contract, whereby the parent approves the same and accepts liability if the minor disaffirms the agreement. In this manner, the entertainment company hopes the parent will encourage the minor not to disaffirm the agreement, because the parent has independent liability for the minor's breach or disaffirmation of the entertainment contract. An exception to a minor's right to disaffirm is that a minor cannot disaffirm a valid obligation entered into by the minor when it is under "the express authority or direction of a statute."¹⁵

[9.7] D. Exceptions to a Minor's Right to Disaffirm: Contracts for Necessaries

In California, a valid contract entered into by a minor may not be disaffirmed on the ground that it was entered into during the actual minority of the minor or at any time thereafter, if all of the following requirements are met:

- The contract is for the payment of the reasonable value of the things necessary for the support of the minor or the minor's family, and
- The necessities are actually furnished to the minor or the family of the minor, and

¹² Cal. Fam. Code § 6701.

¹³ Cal. Fam. Code § 6710.

¹⁴ *Id.*

¹⁵ Cal. Fam. Code § 6711.

- The contract is entered into by the minor at a time when the minor is not under the care of a parent or guardian who is able to provide for the minor or his or her family.¹⁶

[9.8] E. Types of Contracts Between Minors and Third Parties Covered by Cal. Fam. Code §§ 6750–58 (Coogan Act)

In California, only certain contracts entered into by a minor can be approved by the court, pursuant to California Family Code § 6700. The types of contracts covered are as follows:

- Contracts entered into or between an unemancipated minor and third parties on or after January 1, 2000.¹⁷
- An employment contract whereby “a minor is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company), or through a casting agency.”¹⁸ The statute defines “artistic or creative services” as including services as an “actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.”¹⁹
- Contracts whereby a minor agrees to purchase, sell, or license “literary, musical, or dramatic properties” or use of a “person’s likeness, voice recording, performance” or “any rights in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legiti-

16 Cal. Fam. Code § 6712.

17 Cal. Fam. Code § 6750(a).

18 Cal. Fam. Code § 6750(a)(1).

19 *Id.*

mate or living stage, or otherwise in the entertainment field.”²⁰

- A minor’s employment to render services as a participant or player in a sport.²¹

Contracts between a minor and a personal manager or management company are not considered employment contracts and, therefore, are not covered by California Family Code § 6750. This loophole explains why California courts will not approve management contracts under the authority of the Family Code. However, there may be other procedures available for obtaining court approvals for a management contract.

[9.9] F. Enforceability of Talent Agency Contracts

California has a separate statute, California Labor Code § 1700.37, which covers contracts between minors and licensed talent agencies. This statute provides that a minor cannot disaffirm an otherwise valid, court-approved contract entered into during minority, or any time thereafter, with a talent agency to secure the minor “engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise, in the entertainment field,” including services as “an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor or designer.”²² The blank form of the talent agency contract must have been approved by the labor commissioner, and the contract must be approved by the superior court of the county where the minor resides or is employed.²³

[9.10] G. Approving a Minor’s Employment Contract in California

In California, a minor’s employment contract can be approved by any party to the contract filing a petition with the court after reasonable notice to all other parties and an opportunity to be heard.²⁴ Usually, it is the

20 Cal. Fam. Code § 6750(a)(2).

21 Cal. Fam. Code § 6750(a)(3).

22 Cal. Labor Code § 1700.37 (Cal. Lab. Code).

23 *Id.*

24 Cal. Fam. Code § 6751(b).

entertainment company that seeks approval of a minor's contract, since it faces the most risk if the minor disaffirms. For instance, when a minor signs an exclusive recording agreement with a major record label and receives an advance payment of royalties at the time of full execution of the contract, the record company will often provide that the advance will not be paid until there is court approval of the contract. Approval by the court extends to all terms of the contract, including optional or conditional provisions to extend, prolong or terminate the contract.²⁵

For the purposes of filing a petition to approve a minor's contract, the parent or legal guardian shall be considered the minor's guardian *ad litem* unless the court decides the appointment of a different guardian *ad litem* is in the best interest of the child.²⁶ The parent or legal guardian typically consults with the attorney seeking approval of the minor's contract, provides pertinent information and signs the petition.

Minors and their parents who wish to pursue careers in the entertainment industry tend to gravitate to the Los Angeles area because that is where the majority of California entertainment companies are located. Therefore, the Los Angeles County Superior Court hears many of the petitions to confirm minors' contracts. Local Rule 14.22 of the Los Angeles Superior Court provides, in part, as follows:

- The petition for confirmation of the minor's contract shall attach a copy of the contract.
- The petition shall be accompanied by a proposed order.
- The Los Angeles Superior Court shall have continuing jurisdiction over these petitions and funds blocked under court order until the funds are released.
- An application for release of funds may be made after the minor reaches the age of majority and shall be accompanied by proof that the minor has reached the age of 18 or is emancipated.²⁷

25 Cal. Fam. Code § 6751(c).

26 Cal. Fam. Code § 6751(d).

27 Los Angeles Superior Court Rules, <http://www.lasuperior.org/courtrules/vi/PopUp.aspx?ch=chap14&tab=2#14.2>.

[9.11] H. Coogan Trust Account

The trustee, usually a parent, is required to establish a so-called Coogan trust account “at a bank, savings and loan institution, credit union, brokerage firm, or company registered under the Investment Company Act of 1940, that is located in that state of California, unless a similar trust has previously been established.”²⁸ The parent or guardian must provide a copy of the minor’s birth certificate to the other party to the contract.²⁹ Only one parent or legal guardian is required to be appointed as trustee of the funds unless the court decides that appointing a different guardian is in the best interest of the child.³⁰ For instance, the court might not appoint a parent or legal guardian when he or she is unwilling or unable to serve in that capacity—for example, the parent or legal guardian is sick, disabled, incarcerated, cannot be located, etc.

The Coogan trust account must be set up within seven business days after the contract is signed by the minor, the third party individual or loan-out company and the employer.³¹ The statute requires that “15 percent of the minor’s gross earnings pursuant to the contract be set aside by the minor’s employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753.”³² Within 10 business days after the minor’s contract is fully executed, the trustee is required to prepare a detailed written statement, under penalty of perjury, which includes the name, address and telephone number of the financial institution, the name and number on the account, the name of the minor and trustee, and any additional information needed by the minor’s employer to deposit the required portion of the minor’s gross earnings into the account.³³

Within 10 business days of commencement of employment, the trustee must provide a copy of its statement (pursuant to § 6753) to the employer.³⁴ There are detailed provisions in the California Family Code providing for the situation where the parent or guardian fails to provide

28 Cal. Fam. Code § 6753(a).

29 Cal. Fam. Code § 6752(a).

30 Cal. Fam. Code § 6752(b)(2).

31 Cal. Family Code § 6753(a).

32 Cal. Fam. Code § 6752(b)(1).

33 Cal. Fam. Code § 6753(c).

34 Cal. Fam. Code § 6752(b)(3).

the minor's employer with a copy of the trust statement within 180 days after the minor commences employment.³⁵ To ensure that a minor's earnings are protected, a parent or legal guardian must create a trust for the minor within 10 days of the minor commencing services.³⁶ Should a parent or legal guardian fail to create a trust, there is a 180-day grace period, beginning after the minor has started to render services, before the employer is required to forward to the Actor's Fund of America the 15% of the minor's gross income.³⁷

Withdrawals from the trust account are not allowed without a court order,³⁸ and the court continues jurisdiction over the trust established pursuant to the order.³⁹ Upon attaining majority, the beneficiary may withdraw the funds held in trust after providing a certified copy of a birth certificate to the financial institution where the account is located.⁴⁰

[9.12] V. NEW YORK LAW REGARDING MINORS

In New York, contracts made by a person who has not attained the age of 18 can be disaffirmed on the ground of infancy.⁴¹ Therefore, a minor who enters into an agreement with a studio, theatrical agent or manager, or other professional advisor may disaffirm either or both of these types of agreements, *unless* the specific agreement is judicially approved pursuant to N.Y. Arts and Cultural Affairs Law § 35.03.

The New York equivalent of the California Coogan Act, enacted in October 2003, establishes a separate obligation on the part of the employer and the minor's guardian or parent, which requires that a percentage of a minor's gross earnings be set aside at the source (e.g., before it is paid out to the minor or on his or her behalf). Known as the Child Performer Education and Trust Act (CPET), the law provides New York State a much more effective mechanism than had previously existed for protecting the interests of minor performers by placing the burden on the

35 Cal. Fam. Code §§ 6752(b)(9)(a).

36 *Id.*

37 *Id.*

38 Cal. Fam. Code § 6753(b).

39 Cal. Fam. Code § 6752(b)(7).

40 Cal. Fam. Code § 6753(b).

41 GOL § 3-101.

parent and employer to comply with minimum income amounts being set aside *ab initio*, as well as to maintain certain educational standards.⁴²

Currently, a guardian or parent of a minor performer residing or working in New York State must establish a child performer trust account within 15 days from the start of employment unless one for the minor already exists.⁴³ An account for the minor that has been established in California pursuant to the California Coogan Act shall count as an existing trust account, providing that the California bank where the trust account exists maintains at least one office in New York. In either instance, an employer must be notified within 15 days from the start of employment of the existence of the account, and any information necessary to facilitate the transfer of funds into the account. A minimum of 15% of the minor performer's gross earnings must be transferred directly into the account from the employer.⁴⁴ When the balance of the trust account exceeds \$250,000, a trust company must be added as an additional guardian of the account.⁴⁵

Other requirements of the CPET include:

- Monthly verification by the parent that a minor is maintaining satisfactory academic performance, and that any teacher hired by the employer on the minor's behalf is properly supervised.⁴⁶
- All minors working in New York, including non-residents, must apply for a work permit.⁴⁷
- All minors who are New York residents must apply for a work permit regardless of where the work is to take place.⁴⁸
- Regular reporting for funds is required.⁴⁹

42 N.Y. Labor Law § 151; N.Y. Estates, Powers & Trusts Law 7-7.1 (EPTL). CPET is applicable to all minors who reside in or work in New York State, regardless of whether their contracts are submitted for court approval.

43 EPTL 7-7.1(a), (b).

44 *Id.*

45 *Id.*

46 Labor Law § 152.

47 Labor Law § 151.

48 Labor Law §§ 150, 151.

49 Labor Law § 151.

[9.13] VI. NEW YORK REQUIREMENTS TO
OBTAIN COURT APPROVAL OF A
MINOR'S CONTRACT FOR SERVICES

In 1983, New York State, following the example of California's legislature, enacted Arts and Cultural Affairs Law §§ 35.01 and 35.03, which set forth the circumstances in which an employer may seek to have a minor's services contract approved by the court. Once the court approves this contract, the contract cannot be disaffirmed by the minor or even by his or her parents or guardian on any theory of lack of contractual authority or otherwise.

In New York State, an approval procedure may be brought either in supreme court or surrogate court of the county where the minor resides, or where the employer has offices or is conducting business.⁵⁰ The procedure is made by the filing of a petition on behalf of the employer, as well as possibly a separate piggyback petition by a manager or agent (e.g., a personal representation agreement submitted for approval simultaneously with the main petition). The court requires that a petition also contains a request that the parents or the guardian of the minor be appointed the guardian of the minor's property. Other requirements include that the minor appear personally during the petition proceeding and the optional appointment of a special guardian (*guardian ad litem*). A special guardian *ad litem* represents the interests of the minor and may be entitled to make recommendations to amend the substantive terms (e.g., "deal points") of the contract in order to recommend that it be approved.

Section 35.03 sets forth the following specific requirements:

- *Parental Consent*: The granting of approval is contingent on a written, filed acquiescence of the parent(s) or guardian, or a finding that the minor is emancipated.⁵¹ The initial contract should provide a separate approval and acknowledgement either in the text of the main agreement, or preferably, as a separate signed and notarized document. It is important to note that consent of both parents is required or, in the alternative, proof that one parent is deceased or cannot be located, despite the best efforts of the minor and his or her counsel.

50 Arts & Cultural Affairs Law § 35.03 (Arts & Cult. Aff. Law).

51 Arts & Cult. Aff. Law § 35.03(2)(c).

- *Other Considerations / the Best Interests of Minor:* The statute in New York specifically mandates that the court inquire as to the overall contract being “in the best interests of the infant.”⁵² Therefore, an employer should be aware that, in addition to travel and salary considerations, the court may inquire as to the tutoring and other educational considerations that will be provided for the minor at the employer’s cost, particularly if the services required under the contract will prevent the minor from attending his or her regular school. Generally, when an employer requires a minor to tour, record in a studio or be present on a movie set, it is recommended that the employer ascertain well in advance what type of tutoring services will be required.

New York courts will also consider the nature of the work and type of services to be performed when reviewing a contract for approval. Often, the content involved (i.e., sexual content, violence or dangerous stunts); the time frame; and the age of the minor will all weigh heavily on deciding whether a contract meets the “best interests of the infant.” Further, an employer’s attorney should be prepared to instruct the court at a hearing, or as part of the approval process, as to the union regulations that pertain to the contract in question, if any, and how specific terms and conditions in the applicable union agreement with a particular employer would apply to that contract.

It is recommended that the petitioner’s attorney or the attorney who originally negotiated the agreement on behalf of the employer be prepared to explain the business and industry considerations of the agreement as well. Further, it is important to note that in New York, contrary to California, the approval process is for only a minor’s services and not for a grant or license of intellectual property interests. In New York, intellectual property interests by minors do not have an approval process, and absent such interests being held to be necessities, contracts covering them are presumably voidable by the minor until he or she reaches majority.

- *Limitations of Assignment of Contract:* The court usually takes the position that approval is limited to the employer that is submitting the application; it will not permit an assignment of a contract absent the employer seeking and receiving the court’s approval in each

52 Arts & Cult. Aff. Law § 35.03(5)(k).

instance.⁵³ An exception that has been permitted in the past is to provide in the contract that the assignment is pre-approved to a similar company of equal or greater assets, where the original assignor remains secondarily liable.

- *Term of the Contract:* Approval is valid for contracts of three years or less, or seven years if the minor was represented by experienced and competent counsel in the entertainment field in the original negotiation of the contract.⁵⁴

For a contract containing an option for the minor's services that may exceed three years, it is recommended that the attorney who negotiated the contract on behalf of the minor file a separate, signed affidavit attesting to the overall fairness of the contract; and, if applicable, the affidavit should state that the attorney believes that the contract should be approved based on his or her prior experience in the entertainment industry, specifically the area of the industry to which the contract pertains.

- *Custodial Accounts:* The court may require that a parent or guardian consent to the setting aside of a percentage of the minor's earnings to be kept in a custodial account which is co-managed by the court and the guardian until the minor reaches majority. The attorney for the employer should be aware that although a contract has been signed by a minor, until the court has approved the contract, any payments to the minor are at risk. If a deposit or advance is owed pursuant to a signed agreement, and an employer pays this sum prior to the approval of the contract, a minor's right to disaffirm would not require reimbursement of any sums previously paid. Moreover, to the extent that a portion of the monies already given to the minor is required to be put aside in a separate guardianship account, and the minor has already spent this money, the court might take the position that it is the employer's responsibility to put additional funds into the guardianship account. This may be so even if money had already been advanced prior to approval being granted and may be a controlling precedent to obtaining approval. In addition, in determining the amount to be set aside pursuant to the approval proceeding, it is recommended that the court take into account the amount deposited in

53 Arts & Cult. Aff. Law § 35.03(1)(b).

54 Arts & Cult. Aff. Law § 35.03(2)(d).

the CPET trust account and deduct that sum (or percentage) from its calculation.

- *Appointment of Guardian ad Litem*: The court shall appoint a guardian of the minor's property for the duration of the contract. In surrogates court, the current practice is to require the employer's attorney to file a separate "guardian of property" application, usually for the parent of the minor.⁵⁵ Practitioners should note that the guardian of the property is very often a parent or parents of the minor. The process involves disclosure of information regarding the proposed guardian(s), including information about where the proposed guardian(s) has lived since reaching 18 years of age, as well as an inquiry into a proposed guardian's criminal and civil records both in and out of New York State. Sometimes, the details required for this proceeding require a great deal of effort on the part of the petitioners' attorney and the minor's proposed guardian.

In Arts & Cultural Affairs Law § 35.03, the law outlines the specific documents and representations required for submission for the guardians with the petition.⁵⁶ In practice, guardians *ad litem* have been successful in recommending changes in compensation and other work-related terms for their wards.⁵⁷ In New York, the fee which is awarded by the court to the guardian *ad litem* is usually the obligation of the petitioner employer of the minor and not the parent.

[9.14] VII. CONCLUSION

The laws and requirements for employing minors in the entertainment industry are vastly different in California and New York; the procedures and requirements are easier in the former. California requires only one parent's involvement in the approval process. It offers the Coogan trust as both a procedure for the safeguarding of assets and a court procedure for approval of the agreement. In New York, the safeguarding of 15% of the minor's assets is mandatory for all minors working in New York State. An approval procedure for a minor's contract in New York is always at the

55 Arts and Cultural Affairs Law § 35.03(4).

56 Arts and Cultural Affairs Law § 35.03(8)(a), (b).

57 Examples in one author's practice have included (1) the increase in an initial episodic fee for one "mafia princess" of a long-running cable series, (2) the permanent name change of a famous actress starting with her first professional film, and (3) the hiring of a full-time tutor for a minor recording artist whose services were required away from her high school during the junior school year.

option of the employer. Further, in California, in contrast to New York, there is no requirement for the separate appointment of a guardian *ad litem*, and the parties may waive their rights to a hearing if all the parties agree to the terms of the contract being presented. For all of these reasons, California offers a more streamlined and less expensive process than that required under the laws of the state of New York.